IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

PAUL G. STEPHAN and JANE A. STEPHAN,
Appellants,

v.

STATE TAX COMMISSIONER OF THE STATE OF DELAWARE
Appellee.

Appeal From the Supreme Court of Delaware.

MOTION TO DISMISS.

Edward J. Wilson
Deputy Attorney General for the
State of Delaware
State Tax Department
843 King Street
Wilmington, Delaware

MOTION TO DISMISS

Your Respondent-Appellee feels that little can be added to the Opinion of the Supreme Court of the State of Delaware and we refer to it for the legal reasoning and documentation in support of our position.

Your Respondent-Appellee addresses himself rather to the sympathetic question here presented. At first blush it would seem a terrible injustice has been perpetrated, taxation without representation, and perhaps worse. A closer examination shows a fleeing of our more substantial citizens from their responsibilities.

The Southeastern Pennsylvania Taxpayers Association, of which Appellant is a member, is composed of many members employed in the City of Wilmington who leave the City and State at nightfall and complain voluably of the engineering, civil disorders, fiscal mismanagement, and taxation while limiting their financial contributions to the merchants to the coffee they buy to drink with the lunch they bring with them. They are further singularly blessed in being able to see the clear-cut solutions that the Congress of the United States in wrestling with the Willis Bill (H.B. 2193 of the last Session) and the 26 states of the Multi-State Compact are unable to find a clear-cut resolution. Neither the Willis Bill nor the Multi-State Compact would aid the petitioners for both give priority of taxation to the place of origination of the income.

States can generally survive the tax result if the Petitioner prevails but what of the cities? A rule of law must apply to all and the cities of New York and Philadelphia could not survive if the non-residents paid only that amount of income taxes that the non-resident would admit he benefited from expenditures.

With all the respect due this Honorable Court and its intelligence, this is still a matter best left to our legislative processes and the man-hours of work put on the Willis Bill and the Multi-State Compact belie the simpatico of Mr. Stephan's self-serving calculations.

This taxpayer talks about his limited benefits when his real benefit is the income he received under the protection of the State of Delaware. It is equally true that the Tax Commissioner of Delaware receives little benefit from the Head Start Program, Aid to Biafra, allowance for servicemen's dependents and farm subsidies. Does it follow he should recalculate his taxes? Should those who disagree with the military or space programs calculate their taxes on those programs with which they agree?

The United States of America is a republic not a democracy. Elected representatives make our laws and if a taxpayer, through his own free choice, has disenfranchised himself, to whom should he lay the blame?

A surtax income tax does by that very fact discriminate, our present income tax laws favor the real property owner and penalize the childless. But there's nothing unconstitutional about such a system and this Honorable Court many times has decided the question.

Your Appellant has not cited one case four-square with his assertion.

There is no substantial Federal question.

Therefore, the appeal or request for certiorari should be dismissed.

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Edward J. Wilson
Deputy Attorney General

Service of required copies of this Motion to Dismiss is hereby acknowledged.

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